

Interview Summary:

Applicant appreciates the courtesies extended to Applicant's counsel during telephone interviews on August 18 and 22, 2005. The substance of those interviews is as follows:

- 1) The interviews did not include any exhibits or demonstrations.
- 2) Claim 1 was discussed in particular.
- 3) The prior art discussed included EP 569955 A.
- 4) Applicant's counsel and the Examiner discussed the Applicant's claimed invention and the differences between the claimed invention and textile material described in one translation of EP 569955 A.
- 5) EP 569955 A fails to disclose a polymeric coated yarn in the outer fabric layer.
See the more detailed Remarks/Arguments below.
- 6) No other pertinent matters were discussed.
- 7) As a result of the interview, Applicant would file a Request for Continued Examination and a Preliminary Amendment with specific arguments.

Remarks/Arguments:

Applicant's invention is a roofing material for automobile convertibles. This unique roofing material combines conventional yarns for the interior fabric with a type of yarn not used heretofore for the outer fabric of convertible tops. The yarn forming the outer fabric is a polymeric coated core yarn which provides a woven design appearance on the surface, and further provides improved weatherability, cleanability, insulation to sound, and resistance to abrasion. Secondly, the woven outer layer is not coated, impregnated, or laminated with a film, foil, or laquer, which normally results in an objectionable appearance. Since the outer layer is formed of the polymeric coated yarns, further protection for the woven fabric is not necessary. Rather, the outer layer is bonded to the inner layer by an adhesive layer which extends across and

joins the entire surface between the inner layer and outer layer. It is this adhesive layer that not only bonds the outer and inner layer together, but also provides the waterproofing effect.

The Examiner has withdrawn all her previous rejections, but not cites new grounds for rejection. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 569955 A in view of U.S. Patent No. 6,539,898 to Gatto. Claims 9-10 and 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,431,979 to Dellinger et al. in view of Gatto, and further in view of U.S. Patent No. 4,996,100 to Druckman et al. Finally, Claims 9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dellinger et al. in view of Gatto, and further in view of U.S. Patent No. 6,557,590 to Swers et al.

Applicant herein amends Claim 1 to more clearly distinguish over the prior art.

Rejections Under 35 U.S.C. § 103

It is the burden of the Examiner to establish a prima facie case of obviousness when rejecting claims under 35 U.S.C. §103. In re Reuter, 651 F.2d 751, 210 USPQ 249 (CCPA 1981). The CAFC (and the CCPA before it) have repeatedly held that, absent a teaching or suggestion in the primary reference for the need, arbitrary modifying of a primary reference or combining of references is improper. The ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). In re Gieger, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987).

EP 569955 A is directed to a textile material for covering folding car covers. According to the Derwent Abstract of this EP 569955 A, the construction comprises (A) a polyolefin, polypropylene, or copolyester backing, (B) a waterproof layer, and (C) an insulating layer. The Examiner relies primarily on this Abstract to form her rejections and assumes that the three layers are stacked one upon the other as A, B, and C. Applicant respectfully disagree. The full translation of EP 569955 A provided by the Examiner varies substantially in its description of the relationships among the various layers. Applicant contends that the Abstract and full translation must be read together, and not as separate publications from which the Examiner can pick and chose. Specifically, the full translation states that the invention is directed to a "polypropylene fabric...where the coating of the fabric with an extruded or calendered foil based

on polyolefin proved to be particularly advantageous...” This means the polypropylene fabric is coated with a polyolefin foil. Further, the full translation refers to a “sealing layer” and a “sealing film,” which describe the polyolefin foil or an applied/painted lacquer for covering the back side of the polypropylene fabric.

Applicant’s convertible top is different. As described above, Applicant’s woven outer layer is not coated, impregnated, laminated, painted, or lacquered with any film, foil, or sealant. Since Applicant’s outer layer is formed of polymeric coated yarns (and perhaps polymeric effect yarns), further protection for the woven fabric is not necessary; i.e., as the outermost layer, it is directly exposed to the elements. This is one of the reasons that polymeric coated yarns are used. Also, Applicant desires an aesthetically pleasing outer appearance, not the type that EP 569955 A would produce.

Thus EP 569955 does not disclose either:

- 1) a woven fabric layer formed of at least 25% by weight of polymeric coated yarns;
- or
- 2) an adhesive waterproofing layer extending across the entire area between the outer fabric and inner headliner fabric bonding the two layers together.

The Examiner acknowledges that EP 569955 A fails to disclose an outer fabric layer containing a polymeric coated core yarn. For this teaching, she relies on Gatto. Applicant has discussed the differences between Applicant’s invention and Gatto in previous communications with the Examiner. Gatto is not directed to convertible top fabrics. Gatto is directed primarily to a protective screen for horse blankets having an outer layer of mesh material to loosely cover the exterior of a horse blanket. Applicant agrees that Gatto teaches that the mesh outer protective layer is made with an extrusion coated polyester core yarn; however, Gatto’s protective layer is not utilized in a convertible top fabric, nor is it used in a construction wherein an outer and inner layer are bonded together by a layer of adhesive that extends completely across the interface or surface between the two layers. The Examiner asserts that it would have been obvious, in view of Gatto, to use a core yarn having an extruded polymeric sheath in the textile construction of EP 569955 A. Applicant respectfully disagrees. EP 569955 A already relies on the sealing layer or sealing film to protect the outer fabric layer. There is no suggestion of need in EP 569955 to substitute the polymer coated yarns for the polypropylene yarns. It would be surplusage, because

of the calendered sealing foil on the top surface of EP 569955. Thus, there would be no motivation for EP 569955 A to use both coated core yarns and a calendered film or lacquered sealing layer. In fact, EP 569955 teaches away from such a combination. Further, there is simply no suggestion in EP 569955 A that woven, polymer coated yarns would provide a suitable alternative to a protective film or lacquer. Modifying EP 569955 A with Gatto may well destroy the desired “environmentally friendly” material selection and material compatibility that is an object of EP 569955 A, violating the long standing holding that any modification that would destroy the invention of the reference cannot serve as a proper reference under 103(a). In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Further, with respect to the Examiner’s proposed combination of EP 569955 A and Gatto, Applicant believes that the Examiner is simply piecing together references in an attempt to illustrate the various limitations of Applicant’s claims. As the Federal Circuit has stated:

It is impermissible to use the claimed invention as an instruction manual or “template” to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that “[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

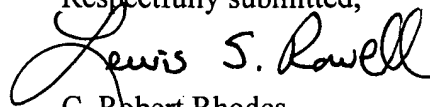
In re Fritch, 972 F.2d 1260, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992).

In view of the deficiencies in EP 569955 A, and its failure to provide an suggestion, teaching, or motivation for modification or combination, Applicant respectfully submits that the rejections of Claims 1-8 should be withdrawn. As to Claims 9-13, Applicant respectfully submits that since independent Claim 1 and dependent Claims 2-8 are in condition for allowance, Claims 9-13, which depend therefrom, are also allowable.

Applicant respectfully submits that the pending application is now in condition for an immediate allowance with Claims 1-13, and such action is requested. If any matter remains unresolved, Applicant’s counsel would appreciate the courtesy of a telephone call to resolve the matter.

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Respectfully submitted,



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